

HOUSE BILL NO. 531

INTRODUCED BY HURWITZ, BARRETT, BRUEGGEMAN, BOOKOUT-REINICKE, HAINES, LAKE,
LEHMAN, A. OLSON, PATTISON, RICE, RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT RECOGNIZING A LANDOWNER'S RIGHT TO USE REASONABLE MEANS TO PROTECT PRIVATE PROPERTY FROM DAMAGE CAUSED BY GAME ANIMALS; DESCRIBING REASONABLE, NONLETHAL MEANS OF PROPERTY PROTECTION, INCLUDING THE ERECTION OF BARRIERS TO EXCLUDE GAME ANIMALS FROM PRIVATE PROPERTY AND THE DRIVING, HERDING, OR HAZING OF GAME ANIMALS; PROVIDING LANDOWNER IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY FOR THE INCIDENTAL DEATH OR INJURY OF GAME ANIMALS AS A RESULT OF THE LANDOWNER'S USE OF REASONABLE MEANS TO PROTECT PRIVATE PROPERTY FROM DAMAGE CAUSED BY GAME ANIMALS; CLARIFYING A LANDOWNER'S LIMITED RIGHT OF LAST RESORT TO USE LETHAL MEANS IN THE IMMEDIATE PROTECTION OF THAT LANDOWNER'S PROPERTY FROM DAMAGE CAUSED BY GAME ANIMALS; AMENDING SECTIONS 87-1-225, 87-3-125, AND 87-3-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Article II, section 3, of the Montana Constitution establishes a person's inalienable right to acquire, possess, and protect property; and

WHEREAS, this inalienable right applies to a landowner's right to protect private property from damage by wild animals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-1-225, MCA, is amended to read:

"87-1-225. Regulation of wild animals damaging property -- public hunting requirements -- landowner's protection of private property by reasonable nonlethal ~~or lethal~~ means. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if ~~he~~ the landowner:

(a) allows public hunting during established hunting seasons; or

(b) does not significantly reduce public hunting through imposed restrictions.

1 (2) The department may provide game damage assistance when public hunting on a landowner's
 2 property has been denied because of unique or special circumstances that have rendered public hunting
 3 inappropriate.

4 (3) Within 48 hours after receiving a request or complaint from any landholder or person in possession
 5 and having charge of any land in the state that wild animals of the state, protected by the fish and game laws
 6 and regulations, are doing damage to the property or crops ~~thereon~~ on the property, the department shall
 7 investigate and arrange to study the situation with respect to damage and depredation. The department may
 8 then decide to open a special season on the game or, if the special season method ~~be~~ is not feasible, the
 9 department may destroy the animals causing the damage. The department may authorize and grant the holders
 10 of ~~said~~ the property permission to kill or destroy a specified number of the animals causing the damage. ~~No A~~
 11 wild, ferocious animal damaging property or endangering life ~~shall be~~ is not covered by this section.

12 (4) (a) The legislature recognizes each Montana landowner's right to use reasonable means to protect
 13 that landowner's private property at any time from damage by game animals.

14 (b) Reasonable means of private property protection include but are not limited to:

15 (i) ~~the erection of fences and barriers designed to exclude game animals from the property~~ THE
 16 ERECTION OF GAME-PROOF FENCES ON PRIVATE LAND TO EXCLUDE GAME ANIMALS IF THE GAME-PROOF FENCES DO NOT
 17 ENCLOSE PUBLIC LAND;

18 (ii) the driving, herding, and hazing of game animals for the immediate protection of private property IF
 19 THE ACTIVITY DOES NOT OCCUR ON PUBLIC LANDS OR AGAINST ANY GAME ANIMAL ON PUBLIC LANDS, WITHOUT
 20 AUTHORIZATION BY THE DEPARTMENT; and

21 (iii) any similar devices or conduct intended to exclude or remove game animals from private property.

22 (c) Landowners or their agents who use reasonable means to protect private property from damage by
 23 game animals are immune from criminal or civil liability related to the incidental death or injury of a game animal
 24 that may occur.

25 ~~Landowners have a limited right to shoot or kill game animals without a license or other~~
 26 ~~departmental authorization, but may do so only as a last resort in the immediate protection of private property.~~
 27 As used in this subsection (4)(d), "last resort" means that the landowner has previously employed reasonable
 28 means to protect private property and has notified the department of the game damage, but the department, in
 29 its discretion, has opted not to provide game damage assistance within 72 hours of the notification.

30 ~~The meat of game animals killed pursuant to subsection (4)(d) must be disposed of as provided in~~

1 ~~87-1-226.~~"

2

3 **Section 2.** Section 87-3-125, MCA, is amended to read:

4 **"87-3-125. Restrictions on use of motor vehicles ~~while hunting~~ -- exception for landowners**
 5 **engaged in protection of private property.** (1) ~~No~~ A person, while hunting game animals or game birds, may
 6 not use a motor-driven vehicle other than on an established road or trail unless ~~he~~ the person has reduced a
 7 big game animal to possession and cannot easily retrieve the big game animal. In that case, a motor-driven
 8 vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply
 9 or where the landowner has not granted ~~such~~ permission. After the retrieval, the motor-driven vehicle is to be
 10 returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal
 11 travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

12 (2) ~~No~~ A person, while hunting game animals or game birds, may not drive or attempt to drive, run or
 13 attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game
 14 animal or game bird with the use or aid of any motor-driven vehicle.

15 (3) ~~No~~ A person, while hunting game animals or game birds, may not drive through any retired cropland,
 16 brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an
 17 established road or trail unless written permission has been given by the landowner and is in possession of the
 18 hunter.

19 (4) (a) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally,
 20 stir up, or harass wildlife, except predators of this state, ~~providing that this subsection.~~

21 (b) Subsection (4)(a) does not apply to landowners and their authorized agents engaged in the
 22 immediate protection of that landowner's property at any time. A landowner or authorized agent who is engaged
 23 in the immediate protection of the landowner's private property pursuant to this subsection (4)(b) is not subject
 24 to criminal or civil prosecution for the death or injury to wildlife resulting from the use of a self-propelled vehicle
 25 in protecting the property.

26 (5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road
 27 or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency
 28 specifically requests or approves state enforcement."

29

30 **Section 3.** Section 87-3-126, MCA, is amended to read:

1 **"87-3-126. Restrictions on use of aircraft or boats -- exception for landowners engaged in**
 2 **protection of private property -- PERMIT REQUIRED.** (1) ~~(a) No A game birds bird or game or fur-bearing animals~~
 3 ~~animal may not be killed, taken, or shot at from any aircraft, including helicopters; nor may any.~~

4 (b) ~~An aircraft or helicopter may not be used for the purpose of concentrating, pursuing, driving, rallying,~~
 5 ~~or stirring up any game or migratory birds or game or fur-bearing animals; nor may any.~~

6 (c) Subsection (1)(b) does not apply to landowners and their authorized agents engaged in the
 7 immediate protection of that landowner's property at any time AND WHO HOLD A PERMIT AS PROVIDED IN [SECTION
 8 4]. A landowner or authorized agent who is engaged in the immediate protection of the landowner's private
 9 property pursuant to this subsection (1)(c) is not subject to criminal or civil prosecution for the death or injury to
 10 wildlife resulting from the use of an aircraft or helicopter in protecting the property.

11 (d) A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat,
 12 or any boat under sail may not be used for the purpose of killing, capturing, taking, pursuing, concentrating,
 13 driving, or stirring up any upland game birds or game or fur-bearing animals.

14 (2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any
 15 game or fur-bearing animals and communicate the location ~~thereof~~ of the game or fur-bearing animals to any
 16 person on the ground by means of any air-to-ground communication signal or other device ~~whatsoever~~
 17 as an aid to hunting or pursuing wildlife.

18 (3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to
 19 use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded
 20 at federal aviation agency approved airports, aircraft landing fields, or heliports ~~which that~~ that have been established
 21 on private property or ~~which that~~ that have been established by any federal, state, county, or municipal governmental
 22 body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies.
 23 The provisions of this subsection do not apply:

24 (a) during emergency situations;

25 (b) ~~or~~ when search and rescue operations are being conducted; or

26 (c) for predator control as permitted by the department of livestock."
 27

28 **NEW SECTION. SECTION 4. ISSUANCE OF PERMITS FOR USE OF AIRCRAFT -- RULEMAKING AUTHORITY. (1)**
 29 **THE DEPARTMENT SHALL ADOPT RULES PROVIDING FOR THE ISSUANCE OF PERMITS TO LANDOWNERS FOR THE USE OF**
 30 **AIRCRAFT TO PROTECT THE LANDOWNERS' PROPERTY BY DRIVING, HERDING, OR HAZING GAME ANIMALS.**

- 1 (2) THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR THE PURPOSE OF HUNTING GAME ANIMALS FROM AIRCRAFT.
- 2 (3) THE RULES MUST INCLUDE BUT ARE NOT LIMITED TO:
- 3 (A) AN APPLICATION PROCESS;
- 4 (B) GUIDELINES FOR VOIDING A PERMIT; AND
- 5 (C) NOTIFICATION REQUIREMENTS.
- 6 (4) THE DEPARTMENT SHALL ISSUE A PERMIT IF THE PERMIT REQUEST IS FOR THE PURPOSE OF THE
- 7 ADMINISTRATION OR PROTECTION OF LAND, WATER, WILDLIFE, LIVESTOCK, DOMESTICATED ANIMALS, HUMAN LIFE, OR
- 8 CROPS AS PROVIDED IN 16 U.S.C. 742J-1.
- 9 (5) THE DEPARTMENT SHALL RESPOND WITH AN APPROVAL OR DENIAL TO A PERMIT REQUEST WITHIN 36 HOURS
- 10 OF RECEIVING THE REQUEST.
- 11 (6) A LANDOWNER WHO RECEIVES A PERMIT SHALL REPORT QUARTERLY TO THE DEPARTMENT:
- 12 (A) THE APPROXIMATE NUMBER OF GAME ANIMALS DRIVEN, HERDED, OR HAZED FROM THE PROPERTY;
- 13 (B) THE TYPE OF GAME ANIMALS DRIVEN, HERDED, OR HAZED FROM THE PROPERTY;
- 14 (C) THE DATES THAT AIRCRAFT WERE USED FOR THE PURPOSE OF THE PERMIT;
- 15 (D) A DESCRIPTION OF THE AREA FROM WHICH GAME ANIMALS WERE DRIVEN, HERDED, OR HAZED; AND
- 16 (E) THE INSTANCES THAT A DEPARTMENT EMPLOYEE WAS IN THE AIRCRAFT OR WAS INVOLVED IN THE DRIVING,
- 17 HERDING, OR HAZING.
- 18 (7) THE DEPARTMENT SHALL:
- 19 (A) UPON ISSUANCE OF A PERMIT, PROVIDE IMMEDIATE NOTIFICATION TO THE U.S. FISH AND WILDLIFE SERVICE
- 20 SPECIAL AGENT IN CHARGE WHO HAS JURISDICTION AS PROVIDED IN 50 CFR 19.31; AND
- 21 (B) REPORT ANNUALLY TO THE U.S. SECRETARY OF THE INTERIOR. THE REPORT MUST INCLUDE BUT IS NOT
- 22 LIMITED TO INFORMATION REQUIRED BY 16 U.S.C. 742J-1 AND 50 CFR 19.32.
- 23 (8) A PERMIT IS IN EFFECT UNTIL VOIDED BY THE COMMISSION FOR JUST CAUSE. A LANDOWNER WHOSE PERMIT
- 24 IS SUBJECT TO BEING VOIDED HAS THE RIGHT TO A PUBLIC HEARING. A PERMIT CANNOT BE VOIDED UNTIL AFTER A PUBLIC
- 25 HEARING IS HELD AND A FINAL DECISION HAS BEEN ISSUED BY THE COMMISSION.
- 26
- 27 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. [SECTION 4] IS INTENDED TO BE CODIFIED AS AN
- 28 INTEGRAL PART OF TITLE 87, CHAPTER 3, PART 1, AND THE PROVISIONS OF TITLE 87, CHAPTER 3, PART 1, APPLY TO
- 29 [SECTION 4].
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